

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
July 30, 2008 Session

STATE OF TENNESSEE v. GREGORY A. PATTERSON

Appeal from the Criminal Court for Anderson County
No. A6CR0015 Donald R. Elledge, Judge

No. E2007-01938-CCA-R3-CD - Filed February 6, 2009

The defendant, Gregory A. Patterson, appeals from his conviction by a jury in the Criminal Court for Anderson County for voluntary manslaughter, a Class C felony. He was sentenced as a Range I, standard offender to six years of confinement and ordered to pay a \$10,000 fine. The defendant contends the trial court erred in imposing the fine by not stating the reasons for its imposition. After concluding that the defendant failed to provide a sufficient record for us to review the trial court's sentencing determinations, we affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JERRY L. SMITH and D. KELLY THOMAS, JR., JJ., joined.

Mart S. Cizek, Clinton, Tennessee, for the appellant, Gregory A. Patterson.

Robert E. Cooper, Jr., Attorney General and Reporter; Deshea Dulany, Assistant Attorney General; David S. Clark, District Attorney General; and Sandra N.C. Donaghy, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

The evidence at trial showed that the defendant told the victim, Alonzo Slater, that he would harm the victim if he did not repay a \$2500 loan. The next morning, the defendant, armed with a sock containing a billiard ball, drove to an area where he suspected the victim would be. The defendant stopped his car suddenly at the victim's car, jumped out, tried to open the victim's car door and initiated a fight with the victim, who was sitting in the driver's seat of a car and whose friend was in the passenger seat. The defendant shot the victim in the back of the head and in the abdomen using a nine millimeter semi-automatic pistol. The passenger ran from the car. The defendant walked around the car to the passenger's side and dragged the victim, now dead from the gunshot to the back of his head, by his feet out of the car and onto the road. The defendant then pulled off the victim's pants and pulled down the victim's boxer shorts to leave the victim's bloody corpse lying exposed in the road.

The jury accredited the testimony of eyewitnesses to the shooting who claimed that the victim was unarmed over the testimony of the defendant, who claimed that the victim had pointed a gun at him and that a struggle between the defendant and the victim had caused the gun to fire. The jury also discredited the defendant's testimony that he laid the gun on the sidewalk and drove away, rather than pulling the body from the car and stripping it.

At the sentencing hearing, the trial court found that one mitigating factor applied, that the defendant had cooperated with authorities after surrendering to them. T.C.A. § 40-35-113(13) (2006). The trial court cautioned, however, that the factor was not entirely positive. Before the defendant surrendered to the police the day following the killing, he drove immediately after the killing to other cities to see his newborn grandchild and his minor daughter. The trial court found that three enhancement factors from Tennessee Code Annotated section 40-35-114 (2006) applied: (1) the defendant had a previous criminal history, (5) the defendant had treated the victim with exceptional cruelty, and (16) the defendant had been adjudicated to have committed an act as a juvenile that would have been a felony if an adult had committed it.

After stating it had considered the trial exhibits, the presentence report, the defendant's mental and physical condition, the facts and circumstances surrounding the offense, the nature and circumstances of the criminal conduct involved, the defendant's criminal history, his previous actions, and his character, the trial court found that the defendant was a threat to the community and that confinement was necessary to protect society from the defendant's future criminal conduct. The trial court found that granting probation to the defendant would depreciate the seriousness of the crime. The trial court also found that the defendant had no rehabilitation potential, as shown by his prior prison sentence for second degree murder and his current conviction for voluntary manslaughter. Starting with the minimum three-year sentence, the trial court weighed the enhancement and mitigating factors, imposed the maximum sentence pursuant to Tennessee Code Section 40-35-111(b)(3) (2006) of six years in confinement, and set a \$10,000 fine.

The defendant argues that because the trial court did not state on the record its reasoning for imposing the fine, its ruling is not entitled to a presumption of correctness and that this court should reverse the order imposing the \$10,000 fine. Citing State v. Marshall, 870 S.W.2d 532, 542 (Tenn. Crim. App. 1993), the defendant claims that his ability to pay the fine is a factor for the trial court to consider when imposing a fine and that this large fine will prevent his successful rehabilitation. He asserts that because the trial court knew that he had a minor child, that he had been appointed counsel after filing an affidavit of indigence, and that he had been in prison for several months by the time of sentencing, the trial court necessarily knew his financial situation had not changed before sentencing.

The State responds that because the trial court followed the principles of the sentencing act, its ruling should be accorded a presumption of correctness in our de novo review. The State argues that the trial court's imposition of a fine was appropriate because the court found both applicable enhancement factors and the necessity of confinement. The State submits that the trial court heard testimony about the defendant's financial situation and that the amount of the fine is appropriate in view of this testimony. The State also points out that no testimony presented at the sentencing hearing showed that imposition of a fine would impose a substantial hardship on the defendant.

This court has jurisdiction to review the amount of a fine imposed as part of the sentence. State v. Bryant, 805 S.W.2d 762 (Tenn. 1991). Appellate review of sentencing is de novo on the record with a presumption that the trial court's determinations are correct. T.C.A. § 40-35-401(d) (2006). This means that if the trial court followed the statutory sentencing procedure, made findings of fact that are adequately supported in the record, and gave due consideration and proper weight to the factors and principles that are relevant to sentencing under the 1989 Sentencing Act, we may not disturb the sentence even if a different result were preferred. State v. Fletcher, 805 S.W.2d 785, 789 (Tenn. Crim. App. 1991). As the Sentencing Commission Comments to Tennessee Code Annotated section 40-35-401(d) note, the burden on appeal is on the defendant to show that the sentence is improper.

However, “the presumption of correctness which accompanies the trial court’s action is conditioned upon the affirmative showing in the record that the trial court considered the sentencing principles and all relevant facts and circumstances.” State v. Ashby, 823 S.W.2d 166, 169 (Tenn. 1991). In this respect, for the purpose of meaningful appellate review,

the trial court must place on the record its reasons for arriving at the final sentencing decision, identify the mitigating and enhancement factors found, state the specific facts supporting each enhancement factor found, and articulate how the mitigating and enhancement factors have been evaluated and balanced in determining the sentence.

State v. Jones, 883 S.W.2d 597, 599 (Tenn. 1994); see T.C.A. § 40-35-210(e) (2006).

Also, in conducting a de novo review, we must consider (1) the evidence, if any, received at the trial and sentencing hearing, (2) the presentence report, (3) the principles of sentencing and arguments as to sentencing alternatives, (4) the nature and characteristics of the criminal conduct, (5) any mitigating or statutory enhancement factors, (6) any statement that the defendant made on his or her own behalf, and (7) the potential for rehabilitation or treatment. T.C.A. §§ 40-35-102, -103, -210 (2006); see Ashby, 823 S.W.2d at 168; State v. Moss, 727 S.W.2d 229 (Tenn. 1986).

The trial court’s decision to impose a fine must be based on factors and principles of the 1989 Sentencing Act, such as criminal history, potential for rehabilitation, financial means, and mitigating and enhancing factors, that are relevant to an appropriate, total sentence. State v. Blevins, 968 S.W.2d 888, 895 (Tenn. Crim. App. 1997). Other factors for a trial court to consider include the serious nature of the crime, State v. Butler, 108 S.W.3d 845, 854 (Tenn. 2003), and the defendant’s background and social history, State v. Marshall, 870 S.W.2d 532, 542 (Tenn. Crim. App. 1993). While the defendant’s ability to pay is a factor, it is not controlling. State v. Alvarado, 961 S.W.2d 136, 153 (Tenn. Crim. App. 1996) (citations omitted). We note that indigence itself does not exempt a defendant from a fine. Alvarado, 961 S.W.2d at 153. If the trial court does not state findings regarding the defendant’s ability to pay the fine, our review is de novo with no presumption of correctness. Id. (citing Ashby, 823 S.W.2d at 169).

We conclude the defendant has not met his burden of demonstrating that the fine was improperly imposed. “It is the duty of the appellant to prepare a record which conveys a fair, accurate, and complete account of what trans[pir]ed in the trial court with respect to the issues which form the basis of the appeal.” State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991) (citing State v. Miller, 737 S.W.2d 556, 558 (Tenn. Crim. App. 1987); see T.R.A.P. 24(b)). The defendant did not include the presentence report in the record. “In the absence of an adequate record on appeal, this court must presume that the trial court’s rulings were supported by sufficient evidence.” State v. Oody, 823 S.W.2d 554, 559 (Tenn. Crim. App. 1991) (citing Vermilye v. State, 584 S.W.2d 226, 230 (Tenn. Crim. App. 1979)). In any event, the defendant has not otherwise shown that he is entitled to a reduction in the fine.

The defendant has not demonstrated that the decision of the trial court was in error. Based on the foregoing and the record as a whole, we affirm the judgment of the trial court.

JOSEPH M. TIPTON, PRESIDING JUDGE